

## **REMARKS/ARGUMENTS**

The applicant would like to acknowledge, with thanks, the Office Action that was mailed on May 23, 2006. This amendment and remarks contained herein are responsive to the Office Action mailed on May 23, 2006. Accordingly, claims 19, 28, 36 and 42 have been amended, claims 20, 30-35 and 44-48 have been canceled and claims 49-53 have been added.

### **Double Patenting Rejection**

Claims 1-17 stand rejected on the ground of non-statutory obviousness type double patenting over claims 1-17 of U.S. Patent No. 6,732,163. Accordingly, claims 1-17 have been canceled without prejudice and disclaimer, therefore, withdrawal of this rejection is requested.

### **Prior Art Rejections**

Claims 1-22, 27, 30-31, 36-41 and 44-47 stand rejected as being anticipated by U.S. Patent No. 6,208,629 to Jaszewski et al. (hereinafter Jaszewski). Claims 28-29 stand rejected as being anticipated by U.S. Patent No. 6,069,871 to Sharma et al. (hereinafter Sharma). Claims 23-26 and 32-33 stand rejected as being obvious in view of Jaszewski. Claims 34-35 and 42-43 stand rejected as being obvious in view of the combination of Jaszewski and Sharma.

Independent claims 19, 28, 36, 42 and 49, as currently amended either recite that a wireless base unit detects other base units within its range. Claims 19, 28 all the steps are performed at the wireless base unit. Claims 36 and 42 recite that the controller that performs selects the operating frequency at the access point is co-located with the transceiver. Claim 49 recites that each of the plurality of access points independently perform the steps. Thus, an aspect recited by all of these claims is that all of the steps are performed by the access point using data acquired by the access point. By contrast, as will be described in further detail herein both Jaszewski and Sharma use a centralized device (e.g. network manager is Jaszewski and either a base station controller or mobile switching center in Sharma) that uses data acquired by the access points (base units). The methods and systems recited in claims 19, 28, 36, 42 and 49 eliminate the need for the centralized device.

Jaszewski utilizes a centralized network manager (ref. char 110) that selects the operating frequencies for all the access points within the network. The network manager collects received signal strength information to determine the amount of communications conflict among the access points using their present channel assignments (col. 5, lines 19-22). The network manager then generates a set of new channel assignments that results in a reduced amount of communications conflict among the access points (col. 5, lines 22-25). Figure 2 of Jaszewski describes a methodology for determining and assigning a new set of channel assignments. Each access point executes steps 212 – 216 (transmit probe requests & receive probe responses & measure signal strengths for each channel) and the network manager performs steps 220 – 260 (generate conflict table & alternate set of channel assignments); (col. 5, lines 48-51).

Sharma, like Jaszewski, utilizes a central entity (e.g. the Base Station Controller or BSC; or mobile switching center) for performing handoffs of mobile units. Sharma discloses that either the mobile switching center or at least one base station controller operate to assign a mobile unit to at least one of a first plurality of base stations or a second plurality of base stations based upon available base station capacities (col. 2, lines 30-35). The BSC obtains capacity information from the BTSs (col. 7, lines 9-13) and selects at least one BTS from those reporting excess capacity and frequency preferences (col. 7, lines 16-19 and 45-48).

Thus, neither Jaszewski nor Sharma, alone or in combination, teach a system wherein the access point detects other access points operating on a plurality of frequency and automatically selects its operating frequency as recited in claims 19, 28, 36, 42 and 49. Furthermore, neither Jaszewski nor Sharma, alone or in combination, teach that the detecting and selecting steps are all performed at the access point.

Therefore, for the reasons just set forth, claims 19, 28, 36 and 42 are neither anticipated nor obvious in view of Jaszewski and/or Sharma. Claims 21-27 directly depend from claim 19 and therefore contain each and every element of claim 19. Claim 29 is directly dependent on claim 28 and therefore contains each and every element of claim 28. Claims 37-41 are directly dependent on claim 36 and therefore contain each and every element of claim 36. Claim 43 is directly dependent on claim 42 and therefore contains each and every element of claim 42. Therefore, for the reasons just set forth for claims 19, 28, 36 and 42, claims 21-27, 29, 37-41 and 43 are neither anticipated nor obvious in view of Jaszewski and/or Sharma.

In addition to the reasons set forth above, claim 53 recites that the characteristic used to select an operating frequencies comprises non-overlapping frequencies, signal strength and load. Jaszewski selects frequencies based on non-overlapping frequencies and signal strength. Sharma only uses load to select a set of BTSs for a mobile unit (the BTSs operating on different frequencies). Jaszewski does not suggest that load is a factor for selecting frequencies, nor does Sharma suggest that non-overlapping frequencies or signal strength (as long as the signal strength is sufficient for the mobile unit to communicate with the BTSs) is a factor; therefore there would be no motivation to combine these references. Furthermore, there is no suggestion in either Jaszewski or Sharma that highest priority should be given to non-overlapping frequencies and second highest priority given to signal strength as recited in claim 54.

### Conclusion

For the reasons set forth above, the claims as now pending are not anticipated nor in view of the cited prior art and therefore a Notice of Allowance is earnestly solicited. The examiner is invited to contact the undersigned if there are any matters to be resolved. If there are any fees necessitated by the foregoing communication, the Commissioner is hereby authorized to charge such fees to our Deposit Account No. 50-0902, referencing our Docket No. 72255/00021.

Respectfully submitted,

Date: August 23, 2006

  
Larry B. Donovan  
Registration No. 47,230  
TUCKER ELLIS & WEST LLP  
1150 Huntington Bldg.  
925 Euclid Ave.  
Cleveland, Ohio 44115-1414  
**Customer No.: 23380**  
Tel.: (216) 696-3864  
Fax: (216) 592-5009